

**Senator Peter C. Knudson** proposes the following substitute bill:

**SUPERVISION OF COSMETIC HEALTH**

**CARE PROCEDURES**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Peter C. Knudson**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill establishes a requirement for supervision for certain cosmetic health care procedures.

**Highlighted Provisions:**

This bill:

- defines cosmetic medical procedure;
- defines cosmetic health care procedure;
- requires supervision for certain cosmetic health care procedures;
- defines the type of supervision required; and
- makes technical amendments.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**58-16a-102**, as last amended by Laws of Utah 2004, Chapters 48 and 280



26 **58-67-102**, as last amended by Laws of Utah 2010, Chapter 101  
 27 **58-68-102**, as last amended by Laws of Utah 2010, Chapter 101

28 ENACTS:

29 **58-1-505**, Utah Code Annotated 1953

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31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **58-1-505** is enacted to read:

33 **58-1-505. Supervision of certain cosmetic health care procedures.**

34 (1) For purposes of this section:

35 (a) "Cosmetic medical procedure" is as defined in Section 58-67-102.

36 (b) "Cosmetic health care procedure" means a cosmetic medical procedure performed  
 37 by or under the supervision of a supervisor.

38 (c) "Supervisor" means:

39 (i) a physician licensed under Chapter 67, Utah Medical Practice Act, or Chapter 68,  
 40 Utah Osteopathic Medical Practice Act acting within the scope of the practice of medicine, as  
 41 defined in Section 58-67-102;

42 (ii) an advanced practice registered nurse licensed under Chapter 31b, Nurse Practice  
 43 Act, acting within the scope of the practice of advanced practice registered nursing, as defined  
 44 in Section 58-31b-102;

45 (iii) a podiatrist licensed under Chapter 5a, Podiatric Physician Licensing Act, acting  
 46 within the scope of the practice of podiatry, as defined in Section 58-5a-102; or

47 (iv) a dentist licensed under Chapter 69, Dentist and Dental Hygienist Practice Act  
 48 acting within the scope of the practice of dentistry, as defined in Section 58-69-102.

49 (2) (a) Notwithstanding Section 58-11a-102, an individual authorized by this title to  
 50 perform a cosmetic health care procedure shall be supervised by a supervisor when performing  
 51 a cosmetic health care procedure.

52 (b) The supervisor shall not delegate the supervisory role to another individual.

53 (c) This section does not apply when a supervisor is personally performing the cosmetic  
 54 health care procedure within the scope of practice of the supervisor's profession as defined in  
 55 the supervisor's licensing statute.

56 (3) When a supervisor is supervising a cosmetic health procedure the supervisor shall:

(a) conduct an in-person evaluation of the patient prior to initiating a treatment protocol or series of treatments;

(b) be immediately available during the procedure for consultation, advice, instruction, and evaluation either in person, by phone, through the Internet, or some other means of immediate communication;

(c) prescribe medical protocols for the procedure; and

(d) provide training to, or verify training of, the supervised individual on the medical protocols required by Subsection (3)(c).

(4) Failure to comply with the provisions of this section is unprofessional conduct.

Section 2. Section **58-16a-102** is amended to read:

**58-16a-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Optometrist Licensing Board created in Section 58-16a-201.

(2) "Contact lens" means any lens that:

(a) has a spherical, cylindrical, or prismatic power or curvature;

(b) is made pursuant to a current prescription; or

(c) is intended to be worn on the surface of the eye.

(3) (a) "Contact lens prescription" means a written or verbal order for contact lenses that includes:

(i) the commencement date of the prescription;

(ii) the base curve, power, diameter, material or brand name, and expiration date;

(iii) for a written order, the signature of the prescribing optometrist or physician; and

(iv) for a verbal order, a record maintained by the recipient of:

(A) the name of the prescribing optometrist or physician; and

(B) the date when the prescription was issued or ordered.

(b) A prescription may include:

(i) a limit on the quantity of lenses that may be ordered under the prescription if required for medical reasons documented in the patient's files; and

(ii) the expiration date of the prescription, which shall be two years from the commencement date, unless documented medical reasons require otherwise.

(c) When a provider prescribes a private label contact lens for a patient the prescription

shall include:

(i) the name of the manufacturer;

(ii) the trade name of the private label brand; and

(iii) if applicable, the trade name of the equivalent national brand.

(4) "Contact lens prescription verification" means a written request from a person who sells or provides contact lenses that:

(a) is sent to the prescribing optometrist or physician; and

(b) seeks the confirmation of the accuracy of a patient's prescription.

(5) "Eye and its adnexa" means the human eye and all structures situated within the orbit, including the conjunctiva, lids, lashes, and lacrimal system.

(6) "Fitting of a contact lens" means:

(a) the using of a keratometer to measure the human eye;

(b) utilizing refractive data provided by a licensed optometrist or ophthalmologist; and

(c) trial fitting of contact lenses, which includes a period of time for evaluation for fit and performance, to determine a tentative contact lens prescription for a patient if the patient:

(i) has not worn contact lenses before; or

(ii) has changed to a different type or base curve.

(7) "Laser surgery" means surgery in which human tissue is cut, burned, or vaporized by means of laser or ionizing radiation.

(8) "Ophthalmic lens" means any lens used to treat the eye and that:

(a) has a spherical, cylindrical, or prismatic power;

(b) is made pursuant to an unexpired prescription; and

(c) is intended to be used in eyeglasses or spectacles.

(9) "Optometric assistant" means an unlicensed individual:

(a) working under the direct and immediate supervision of a licensed optometrist; and

(b) engaged in specific tasks assigned by the licensed optometrist in accordance with the standards and ethics of the profession.

(10) "Optometrist" or "optometric physician" means an individual licensed under this chapter.

(11) "Optometry" and "practice of optometry" mean any one or any combination of the following practices:

- 119 (a) examination of the human eye and its adnexa to detect and diagnose defects or  
120 abnormal conditions;
- 121 (b) determination or modification of the accommodative or refractive state of the  
122 human eye or its range or power of vision by administration and prescription of pharmaceutical  
123 agents or the use of diagnostic instruments;
- 124 (c) prescription, ordering, administration, or adaptation of ophthalmic lenses, contact  
125 lenses, ophthalmic devices, pharmaceutical agents, laboratory tests, or ocular exercises to  
126 diagnose and treat diseases, defects, or other abnormal conditions of the human eye and its  
127 adnexa;
- 128 (d) display of any advertisement, circular, sign, or device offering to:
- 129 (i) examine the eyes;
- 130 (ii) fit glasses or contact lenses; or
- 131 (iii) adjust frames;
- 132 (e) removal of a foreign body from the eye or its adnexa, that is not deeper than the  
133 anterior ~~[1/2]~~ one-half of the cornea;
- 134 (f) consultation regarding the eye and its adnexa with other appropriate health care  
135 providers, including referral to other appropriate health care providers; and
- 136 (g) a person, not licensed as an optometrist, directing a licensee under this chapter to  
137 withhold or alter the eye care services the licensee has ordered.
- 138 (12) "Pharmaceutical agent" means any diagnostic or therapeutic drug or combination  
139 of drugs that has the property of assisting in the diagnosis, prevention, treatment, or mitigation  
140 of abnormal conditions or symptoms of the eye and its adnexa.
- 141 (13) "Physician" has the same meaning as defined in ~~[Subsection 58-67-102(7)]~~  
142 Sections 58-67-102 and 58-68-102.
- 143 (14) "Prescription drug" has the same definition as in Section 58-17b-102.
- 144 (15) "Unexpired" means a prescription that was issued:
- 145 (a) not more than two years prior to presentation of the prescription for an ophthalmic  
146 lens; or
- 147 (b) in accordance with Subsection (3) for a contact lens.
- 148 Section 3. Section **58-67-102** is amended to read:
- 149 **58-67-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "ACGME" means the Accreditation Council for Graduate Medical Education of the American Medical Association.

(2) "Administrative penalty" means a monetary fine imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct, as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(3) "Board" means the Physicians Licensing Board created in Section 58-67-201.

(4) "Cosmetic medical procedure":

(a) includes:

(i) the use of tissue altering energy-based devices that have the potential for severe injury such as American National Standards Institute designated Class III b and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices;

(ii) the injection of federal Food and Drug Administration approved dermal fillers, lipolytic drugs and neurotoxins; and

(iii) certain chemical peels as may be defined by the division by administrative rule; and

(iv) other procedures as may be defined by the division by administrative rule adopted in consultation with the board; and

(b) does not include:

(i) hyfrecation devices existing as of January 1, 2011; or

(ii) the treatment of the ocular globe, including refractive surgery.

~~[(4)]~~ (5) "Diagnose" means:

(a) to examine in any manner another person, parts of a person's body, substances, fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's body, to determine the source, nature, kind, or extent of a disease or other physical or mental condition;

(b) to attempt to conduct an examination or determination described under Subsection ~~[(4)]~~ (5)(a);

(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection ~~[(4)]~~ (5)(a); or

(d) to make an examination or determination as described in Subsection ~~[(4)]~~ (5)(a) upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.

~~[(5)]~~ (6) "LCME" means the Liaison Committee on Medical Education of the American Medical Association.

~~[(6)]~~ (7) "Medical assistant" means an unlicensed individual working under the direct and immediate supervision of a licensed physician and surgeon and engaged in specific tasks assigned by the licensed physician and surgeon in accordance with the standards and ethics of the profession.

~~[(7)]~~ (8) "Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

~~[(8)]~~ (9) "Practice of medicine" means:

(a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain, cosmetic medical procedure, or other condition, physical or mental, real or imaginary, or to attempt to do so, by any means or instrumentality, and by an individual in Utah or outside the state upon or for any human within the state, except that conduct described in this Subsection ~~[(8)]~~ (9)(a) that is performed by a person legally and in accordance with a license issued under another chapter of this title does not constitute the practice of medicine;

(b) when a person not licensed as a physician directs a licensee under this chapter to withhold or alter the health care services that the licensee has ordered, but practice of medicine does not include any conduct under Subsection 58-67-501(2);

(c) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection ~~[(8)]~~ (9)(a) whether or not for compensation; or

(d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine," "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed physician and surgeon, and if the party using the designation

is not a licensed physician and surgeon, the designation must additionally contain the description of the branch of the healing arts for which the person has a license.

~~[(9)]~~ (10) "Prescription device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, and any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by or through a person or entity licensed under this chapter or exempt from licensure under this chapter.

~~[(10)]~~ (11) "Prescription drug" means a drug that is required by federal or state law or rule to be dispensed only by prescription or is restricted to administration only by practitioners.

~~[(11)]~~ (12) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

~~[(12)]~~ (13) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-67-501.

~~[(13)]~~ (14) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-67-502, and as may be further defined by division rule.

Section 4. Section **58-68-102** is amended to read:

**58-68-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "ACGME" means the Accreditation Council for Graduate Medical Education of the American Medical Association.

(2) "Administrative penalty" means a monetary fine imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct, as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(3) "AOA" means the American Osteopathic Association.

(4) "Board" means the Osteopathic Physicians Licensing Board created in Section 58-68-201.

(5) "Cosmetic medical procedure":

(a) includes:

(i) the use of tissue altering energy-based devices that have the potential for severe injury such as American National Standards Institute designated Class III b and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices;



(ii) the injection of federal Food and Drug Administration approved dermal fillers, lipolytic drugs and neurotoxins; and

(iii) certain chemical peels as may be defined by the division by administrative rule; and

(iv) other procedures as may be defined by the division by administrative rule adopted in consultation with the board; and

(b) does not include:

(i) hyfreaction devices existing as of January 1, 2011; or

(ii) the treatment of the ocular globe, including refractive surgery.

~~[(5)]~~ (6) "Diagnose" means:

(a) to examine in any manner another person, parts of a person's body, substances, fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's body, to determine the source, nature, kind, or extent of a disease or other physical or mental condition;

(b) to attempt to conduct an examination or determination described under Subsection ~~[(5)]~~ (6)(a);

(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection ~~[(5)]~~ (6)(a); or

(d) to make an examination or determination as described in Subsection ~~[(5)]~~ (6)(a) upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.

~~[(6)]~~ (7) "Medical assistant" means an unlicensed individual working under the direct and immediate supervision of a licensed osteopathic physician and surgeon and engaged in specific tasks assigned by the licensed osteopathic physician and surgeon in accordance with the standards and ethics of the profession.

~~[(7)]~~ (8) "Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

~~[(8)]~~ (9) "Practice of osteopathic medicine" means:

(a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain, cosmetic medical procedure, or other

condition, physical or mental, real or imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part is based upon emphasis of the importance of the musculoskeletal system and manipulative therapy in the maintenance and restoration of health, by an individual in Utah or outside of the state upon or for any human within the state, except that conduct described in this Subsection ~~[(8)]~~ (9)(a) that is performed by a person legally and in accordance with a license issued under another chapter of this title does not constitute the practice of medicine;

(b) when a person not licensed as a physician directs a licensee under this chapter to withhold or alter the health care services that the licensee has ordered, but practice of medicine does not include any conduct under Subsection 58-68-501(2);

(c) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection ~~[(8)]~~ (9)(a) whether or not for compensation; or

(d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions, in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine," "osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.," "D.O.," or any combination of these designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed osteopathic physician, and if the party using the designation is not a licensed osteopathic physician, the designation must additionally contain the description of the branch of the healing arts for which the person has a license.

~~[(9)]~~ (10) "Prescription device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, and any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by or through a person or entity licensed under this chapter or exempt from licensure under this chapter.

~~[(10)]~~ (11) "Prescription drug" means a drug that is required by federal or state law or rule to be dispensed only by prescription or is restricted to administration only by practitioners.

~~[(11)]~~ (12) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

~~[(12)]~~ (13) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-68-501.

305            [~~(13)~~] (14) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-68-502  
306    and as may be further defined by division rule.